



State of New Jersey

Property Tax Convention Task Force

**The Report of the
Property Tax Convention Task Force
to the
Governor and Legislature**

A Plan to Hold a Property Tax Convention

“Finding A Fairer System”

December 31, 2004



State of New Jersey
NEW JERSEY PROPERTY TAX CONVENTION TASK FORCE

CHAIR
Carl E. Van Horn, Ph.D.

VICE CHAIR
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December 31, 2004

Honorable Richard J. Codey
Acting Governor and Senate President

Honorable Albio Sires
Speaker of the General Assembly

Dear Gentlemen:

We hereby transmit the Report of the Property Tax Convention Task Force (Task Force) as required by its enabling act, P.L. 2004, c. 85. As directed by that law, the Task Force has developed recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system.

In considering these recommendations, we analyzed comments offered at our public hearings from a wide array of individuals from across the State and across the country. We found scholars' constitutional law suggestions as compelling as citizen descriptions of the problem of high property taxes.

We conclude the mission you have given us with the strong belief that reform of New Jersey's property tax system is needed and that, should the Legislature decide that it is appropriate to authorize a Property Tax Convention to achieve reform, then such a Convention should be conducted in accordance with these recommendations.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Carl E. Van Horn".

Carl E. Van Horn, Ph.D.
Chair

A handwritten signature in blue ink, appearing to read "Michael R. Cole".

Michael R. Cole, Esq.
Vice Chair

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Hon. Joseph J. Roberts, Jr.	New Jersey State Assembly Majority Leader
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Table of Contents

	<u>Page</u>
Executive Summary	1
Introduction	5
Selection of Delegates	6
Scope	12
The Convention	16
Costs	19
Signature page	21
Appendix #1 – List of meeting/hearing dates	22
Appendix #2 – List of commenters	23
Appendix #3 – Summary of correspondence received	27
Appendix #4 – Timeline for property tax reform	28
Appendix #5 – Documents cited in Report	29
Appendix #6 – Additional comments by Task Force members	51

A Plan to Hold a Property Tax Convention

“Finding A Fairer System”

Report of the Property Tax Convention Task Force

This report, dated December 31, 2004, contains the recommendations of the Property Tax Convention Task Force and is respectfully submitted to the Governor and Legislature as required by law.

Executive Summary

P.L. 2004, c. 85 (the Act) was signed into law on July 7, 2004, creating the Property Tax Convention Task Force (Task Force). The Act passed the New Jersey State Legislature with bipartisan support, with the State General Assembly voting 63-16-1 and the State Senate 31-9.

The Task Force consists of 15 members: nine appointed by the Governor; two appointed by the Senate President, one of whom is a member of the Senate and one a member of the public; two members appointed by the Speaker of the General Assembly, one of whom is a member of the General Assembly and one a member of the public; one member appointed by the Minority Leader of the Senate who is a member of the Senate; and one member appointed by the Minority Leader of the General Assembly who is a member of the General Assembly. In accordance with the Act, all members have substantial expertise and experience in State and local government matters, constitutional law, public finance or other related areas. The Task Force was chaired by Professor Carl E. Van Horn, who was appointed to that post by the Governor, consistent with the Act, and Michael R. Cole, Esq., served as Vice Chair.

Section 3 of the Act charges the Task Force with:

Considering and developing recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system. Such recommendations shall include, but not be limited to, the recommended method for the **selection of delegates** to the convention, the appropriate **scope** of the convention’s inquiry and the method for consideration of the convention’s recommendations, and shall identify the specific issues or questions that the **convention** should consider as well as the estimated **costs** of the convention.

Consensus was formed on nearly all issues, but where that was not possible despite the very best efforts and intentions of all, it is faithfully noted in this report.

As detailed in this report, the Task Force recommends:

Selection of Delegates

- **Delegates should be elected by voters simultaneously with the vote on the holding of the Convention at the general election in November 2005.**
- **Delegates should be elected by district using the 40 current legislative districts.**
- **To help ensure a diverse and representative group of Delegates, there should be either (a) 80 elected Delegates, two from each district, plus 10 additional Delegates to be appointed in the following manner: two each by the Governor, Senate President, Senate Minority Leader, General Assembly Speaker, and Assembly Minority Leader, or (b) 120 elected Delegates, three from each district, with no appointed Delegates.**
- **Legislators and all other elected officials should be permitted to seek election as a Delegate.**
- **All of the current qualifications for Assembly candidates should be used for Delegate candidates, including the requirement of 100 nominating petition signatures.**
- **Positioning on the ballot should be rotated so that the “luck of the draw” does not influence the election results.**
- **Delegate elections should be nonpartisan, and neither party affiliation nor any slogan should appear next to a candidate’s name on the ballot, and bracketing by two or more candidates should be prohibited.**
- **There should be no public financing of Delegate campaigns because public financing of elections in New Jersey is untested (except at the gubernatorial level) and the results of the pilot “clean elections” program for legislative elections will not be known until after the 2005 general election, and also because of the concern about costs.**
- **There should be a \$500 limit on contributions to Delegate election campaigns from any source.**

- Candidates or advocacy groups who spend in excess of a voluntary \$25,000 spending limit should be required to include in all of their Convention-related political communications a statement that they have exceeded that voluntary limit.
- Candidates whose spending does not exceed the \$25,000 voluntary limit should be authorized to include in their political communications a statement that they are staying within that voluntary limit.
- Delegates should not be compensated for their service but should be reimbursed for necessary out-of-pocket expenses.

Scope

- The enabling act should clearly state that the Convention will be strictly limited to considering and making recommendations to reform the current system of property taxation and that these recommendations must further one or more of the following goals: eliminating inequities in the current system of property taxation, especially as they affect low and moderate income residents; ensuring greater uniformity in the application of property taxes; reducing property taxes as a share of overall public revenue; providing alternatives that reduce the dependence of local governments on property taxes; and providing alternative means, including possible increases in other taxes, of funding local government services.
- The enabling act should include language substantially identical to that found in A-1786 of 2004 (Roberts) and S-263 of 2004 (Adler) regarding the “thorough and efficient” clause and affordable housing obligations.
- There should be a requirement that proposals be revenue neutral, which should be clearly defined and verifiable.
- A Convention authorized to propose both statutory changes and Constitutional amendments is preferred; but if the legislation necessary to grant the authority to propose statutory changes is not approved by the necessary three-fifths majority in the Legislature next year, then a Convention that can propose only constitutional amendments still should be allowed to proceed.

- A panel of three retired jurists, to be appointed by the Chief Justice of the Supreme Court of New Jersey, should review proposals during the course of the Convention and before final adoption by the Convention to make sure the proposals do not exceed the Convention's scope and are consistent with the mandate for the Convention and any limitations in place, and there should be a presumption of validity for proposals that the panel has determined to be consistent with the mandate and any limitations.
- The Convention enabling act should require that any legal challenge to the Convention's proposals must be filed under a very short time frame and should provide for expedited court review of any challenges.

The Convention

- The Convention should be held at Rutgers University in New Brunswick.
- The Convention should convene soon after the Delegate election in order to organize itself and give direction to staff for research projects. The Convention should complete its work by July 31, 2006.
- Research for the Delegates before the Convention, including the compilation of draft rules for operation of the Convention, should be prepared by the Legislative Services Commission.
- Delegates should set the rules for Convention operations, except that the Legislature should specify in the enabling act that approval of proposals for submission to the voters requires a majority vote of all those serving as Delegates.
- The Convention should not be permitted to present to the voters separate questions on each of its specific proposals but should be required to present a comprehensive proposal as a single question.
- Convention proposals should be placed on the 2006 general election ballot immediately following the Convention.
- The Convention should be authorized to conduct a public education campaign about its proposals, but the campaign should be neutral in content.

Costs

- \$3.845 million should be appropriated for pre-Convention, Convention, and post-Convention activities.

I – INTRODUCTION

The Property Tax Convention Task Force (“Task Force”) developed its recommendations on how to hold a Property Tax Convention through a remarkable, and perhaps unprecedented, public process that ultimately involved nine public hearings and six working sessions that were open to the public. In fact, the use of a Task Force to advise the Legislature on the details of calling a Convention is itself unprecedented, a new approach, nationally, to state constitutional change.

However, the idea of conducting a *limited* Convention is not unprecedented and is entirely within the power of the Legislature and the people. New Jersey’s Constitution is one of just nine state constitutions that have no provision for conventions, and this leaves maximum discretion to the Legislature and the people to limit their conventions, according to a report from the Center for State Constitutional Studies at Rutgers University. This is in part based upon State history; the 1947 convention was limited *from* considering the method of apportionment, while the 1966 convention was limited *to* considering questions of apportionment.

All of the public hearings and working sessions of the Task Force were recorded and transcribed. (A complete list of the hearings and working sessions is included as Appendix #1 to this report.) The public hearings were conducted in four phases: members of the public; former Governors, State Treasurers, Supreme Court Justices and other officials; advocacy groups (education, business, labor, seniors, environment, civil rights, urban, etc.); and constitutional scholars and other experts. (Those who presented comments to the Task Force are listed in Appendix #2 to this report.)

To further facilitate public involvement, the Task Force established a website (<http://www.state.nj.us/convention/>) that contains links to all hearing transcripts and audio recordings of each hearing and meeting. The public comment period ran until the date of the completion of this report through a variety of means, including e-mail to the Task Force website. Other sources of input compiled by the Task Force came from examination of advocacy group and other websites, e-mail to former Governor James E. McGreevey and to Acting Governor Richard J. Codey, letters, agency reports and studies, citizen telephone calls, and faxes.

In total, more than 150 people testified at the hearings, more than 600 people attended the hearings, and still hundreds more corresponded or communicated via e-mail on the Task Force website or through other means. (Appendix #3 contains a summary of this written correspondence.) All of this input was invaluable to the Task Force.¹

1. In addition, the Task Force benefited from the advice of its two consultants, G. Alan Tarr, Distinguished Professor of Political Science at Rutgers University, Camden, and Director of the Rutgers Center for State Constitutional Studies (CSCS); and Robert F. Williams, Distinguished Professor of Law at Rutgers University School of Law-Camden and Associate Director of CSCS. (The CSCS Background Papers are available at the Center’s website: <http://camlaw.rutgers.edu/statecon/tax.html>.) The Task Force

The majority of those who testified before the Task Force took the opportunity to let it be known, in no uncertain terms, their strong belief that reform of New Jersey's property tax system is needed and that a Property Tax Convention is the best (and perhaps only) way to achieve meaningful reform. This report reflects the Task Force's recommendations about how such a Convention should be conducted should the Legislature and the Governor decide that it is appropriate to put before the voters the question of whether to hold such a Convention.

II – SELECTION OF DELEGATES

This section concerns the process by which Convention Delegates would be selected.

Simultaneous Election

Delegates should be elected by voters simultaneously with the vote on the holding of the Convention at the general election in November 2005.

By way of historical background, the enabling act for the 1947 convention provided for a simultaneous vote. The 1966 enabling act did not provide for voter approval of the convention, but only for voter election of delegates, since it was in response to a New Jersey Supreme Court mandate to address legislative apportionment.

The Task Force considered the comments of some witnesses that a Delegate election as part of the general election could be lost in the numerous issues that are traditionally on the ballot in a gubernatorial election year such as 2005, and the Task Force determined that would not be the case. Rather, the Task Force sees a benefit of a general election vote for Delegates in that the large number of voters adds credibility to the vote as an expression of the will of the people. The Task Force also recognizes that a simultaneous election is much less expensive than selecting Delegates at a special election, but it does not believe that those committed to addressing the problem of burdensome property taxes will be deterred from seeking election as a Delegate simply because the outcome of the election, as to whether to hold a Convention, will not be known prior to seeking election as a Delegate.

For 2005, the procedure would be separate votes on the ballot for the Convention and for electing Delegates. A voter who votes "no" on the Convention question still would be able to vote for Delegates, as was the case in 1947. The rationale is that a voter

also received assistance from staff at the following agencies: Department of Transportation, Division of Elections, Division of Law, Election Law Enforcement Commission, Governor's Office, and Office of Legislative Services. Finally, the Task Force acknowledges the assistance and hospitality of staff at Rutgers University in New Brunswick (where all of the working sessions were held) and of Bergen Community College, Mercer County Community College, and Camden County College, Blackwood, which each hosted a public hearing.

who disapproves of a Convention still should have a voice in the Delegate selection process in the event a Convention is held. Votes cast in the Delegate candidate election would be counted whether or not the voter had voted on the question of holding a Convention.

Districts

Delegates should be elected by district using the 40 current legislative districts.

This is the approach in all of the recent Convention bills² and even reflects the manner of the 1947 enabling act (although legislative apportionment at the time was based upon county boundaries). Also, such an apportionment system would satisfy any one-person, one-vote concerns that may apply to the selection of Delegates.

Number of Delegates

To help ensure a diverse and representative group of Delegates, there should be either (a) 80 elected Delegates, two from each district, plus 10 additional Delegates to be appointed in the following manner: two each by the Governor, Senate President, Senate Minority Leader, General Assembly Speaker, and Assembly Minority Leader, or (b) 120 elected Delegates, three from each district, with no appointed Delegates.

The Task Force unanimously agrees that in determining the number of Delegates the Legislature should be guided by the goal of trying to ensure that the Delegates to the Convention reflect the diversity of the State and the full range of interests that are concerned with property tax reform. However, the Task Force could not agree on the best method for achieving this goal. Nonetheless, two specific proposals emerged from the Task Force's deliberations, and each received the support of roughly half of the members.

80 elected plus 10 appointed Delegates

Under this proposal, there would be 80 elected Delegates (two from each district) plus 10 additional Delegates to be appointed by the legislative leadership of both parties (with each of the four leaders appointing two Delegates) and the Governor (two appointments). Under this proposal, the enabling act would specify that the criteria for the 10 additional Delegates is to provide demographic diversity. Further, the enabling act would specify that the appointments would be made within 10 days of the meeting of the

2. Reference to "the recent Convention bills" means A-1786 of 2004 (Roberts), S-263 of 2004 (Adler), S-1392 of 2004 (Lance), A-540 of 2002 (Roberts), S-478 of 2002 (Adler), A-2955 of 2000 (Lance/Roberts), and S-1800 of 2000 (Schluter/Adler).

Board of Canvassers to certify the election of the Delegates, at which time the demographic diversity needs will be known. The Legislature may want to consider having the 10 additional Delegates appointed collectively by the legislative leadership and the Governor as a slate.

Although the 1947 and 1966 conventions did not have any appointed delegates, the Legislature has the authority to permit appointed Delegates. The Task Force's consultants (Professors Tarr and Williams) and Professor Gerry Benjamin of SUNY-New Paltz all noted that silence by a state constitution on Delegate selection provides an opportunity for the use of appointed Delegates. The New Jersey Constitution is silent on conventions and therefore provides such an opportunity. Also, any one-person, one-vote issues that might apply to Delegate selection could be addressed by asking the voters to approve this in the ballot question.

The proponents of this proposal believe that the regular election process may not guarantee a truly diverse group of Delegates and that the appointment of additional Delegates would help to achieve the appropriate balance. Also, these Task Force members are concerned that a Convention with significantly more than about 90 Delegates could prove to be unwieldy, thereby making it more difficult to carry out the work of the Convention and achieve consensus on reform proposals.

120 elected Delegates and no appointed Delegates

Under this proposal, there would be 120 elected Delegates (three from each district) and there would be no provision for appointed Delegates. The proponents of this proposal believe that it is unwise to create two types of Delegates (elected and appointed) and that the chances for creating a more diverse Delegate pool are greater if there simply were more elected Delegates. The proponents of this proposal also note that there were no appointed delegates to the 1947 or 1966 conventions.³

Legislators/Elected Officials as Delegates

Legislators and all other elected officials should be permitted to seek election as a Delegate.

Some at the Task Force public hearings recommended that Legislators should qualify to participate, while others suggested the opposite, and still others suggested not allowing local elected officials to be Delegates. According to the Office of Legislative Services (OLS), only Montana and Tennessee have constitutional provisions barring

3. Task Force member Assemblyman Kevin J. O'Toole does not support either of these proposals and instead believes that there should be 120 elected delegates, three from each district, and that in each district the Republican, Democrat, and independent/unaffiliated candidate receiving the highest number of votes should be seated as delegates.

Legislators as Delegates. (12/1/04 OLS memo to Senator Lance, included in Appendix #5.) Legislators were permitted to be delegates at both the 1947 and 1966 conventions, as they are in all of the recent Convention bills. A compelling benefit of this recommendation cited by the Task Force is the right of the voters to choose who should be Delegates.⁴

Petitions/Qualifications

All of the current qualifications for Assembly candidates should be used for Delegate candidates, including the requirement of 100 nominating petition signatures.

Various options were considered which lead to this recommendation. Hearing speakers noted the dedication and significant time needed to acquire 100 signatures, and the Task Force recommends that as sufficient. The goal is to encourage ordinary citizens to run and not to make the hurdle too high. One hundred petition signatures is deemed appropriate to be accessible yet still substantial. Regarding the Assembly qualifications of Article IV of the Constitution that Delegate candidates must meet, such candidates must be 21 years old, a resident of the State for at least two years, a resident of their district for at least one year, and entitled to the right to vote.

Ballot Position

Positioning on the ballot should be rotated so that the “luck of the draw” does not influence the election results.

All of the recent Convention bills call for this procedure, in which the county clerk would change the order of the names from one election district to the next. The Legislature should consider providing for the placement on the ballot of the listing of Delegate candidates separate from the listing of candidates for other offices.

Partisan Identification/Bracketing/Slogans

The Delegate elections should be nonpartisan, neither party affiliation nor any slogan should appear next to a candidate’s name on the ballot, and bracketing by two or more candidates should be prohibited.

Nonpartisan means that partisan party affiliation is not allowed on the ballot. Expert testimony to the Task Force supported nonpartisan Delegate elections. It is believed to focus the electorate and the candidates on the issues. Once elected, the Delegates continue that focus, which in turn can be expected to lead to meaningful

4. Task Force member Assemblyman Kevin J. O’Toole dissents from this recommendation and believes that Legislators should not be permitted to serve as Delegates.

proposals. Professor Dawn Clark Natch of Northwestern University Law School, a former Illinois state legislator, gubernatorial candidate and delegate to the very successful 1970 Illinois constitutional convention, provided written testimony that a nonpartisan Delegate election makes it possible for convention discussion and coalition-building across party lines. For similar reasons, the Task Force also opposes slogans on the ballot.

Bracketing is defined in prominent court cases as the identification of a group of candidates in a column under the same slogan (*Harrison v. Jones*, 44 N.J. Super. 456 (App. Div. 1957)). None of the recent Convention bills allow bracketing for the Delegate election. It is supported in partisan elections, which desire to have this fact brought to the attention of the voter, and it was used in 1947 and 1966 for conventions whose scopes involved an issue of partisan interest, legislative apportionment. The Task Force recommends prohibiting bracketing, as it is a partisan election mechanism that does not serve the interests of the Convention Delegates seeking to amend their Constitution.⁵

Public Financing

There should be no public financing of Delegate campaigns because public financing of elections in New Jersey is untested (except at the gubernatorial level) and the results of the pilot “clean elections” program for legislative elections will not be known until after the 2005 general election, and also because of the concern about costs.

While there is significant interest among the Task Force members in having some form of public financing for the Delegate election, there also is a recognition that there is no base of experience from which to draw. The only publicly financed elections are those for Governor, which clearly would not be a model that could be used. Also, while New Jersey may be moving in the direction of increasing the scope of public financing of elections, the results of the first experiment in this regard, the “clean elections” pilot program for legislative elections, will not be known until after the 2005 election. The Task Force also is concerned about the potential cost of a publicly financed Delegate election. For example, even a minimal program of providing a mailing for those candidates who were the subject of a negative campaign could cost several million dollars. If just one candidate in each district qualified for the mailing, that would mean a mailing to each of the over 5 million registered voters in the state. Despite the lack of public financing, the Task Force suggests that a Convention website be maintained that includes candidate information, and that debates organized by an independent civic organization be encouraged.

5. Task Force member Assemblyman Kevin J. O’Toole believes that partisan identification should be permitted consistent with his proposal described in footnote 3.

Campaign Contributions

There should be a \$500 limit on contributions to Delegate election campaigns from any source.

Five hundred dollars for Delegates is a limit that is lower than Legislators' limits of \$2,600 from individuals and certain entities and \$8,200 from other entities. This \$500 recommendation is similar in implementation to the current gubernatorial election system administered by the Election Law Enforcement Commission (ELEC), making it less costly and more efficient to administer, and this lower limit is needed to reduce the effect of money in the process. ELEC would promulgate rules for the Delegate election, investigate potential campaign finance violations, and make campaign finance reports publicly available.

Campaign Spending

Candidates or advocacy groups who spend in excess of a voluntary \$25,000 spending limit should be required to include in all of their Convention-related political communications a statement that they have exceeded that voluntary limit.

Candidates whose spending does not exceed the \$25,000 voluntary limit should be authorized to include in their political communications a statement that they are staying within that voluntary limit.

\$25,000 is the limit on expenditures in exchange for public financing that is set forth in some of the recent Convention bills (A-540 of 2002 (Roberts) (before its amendment), S-478 of 2002 (Adler) (before its amendment), A-2955 of 2000 (Lance/Roberts), and S-1800 of 2000 (Schluter/Adler)). Even in the absence of public financing, as noted below, the Task Force decided that there should be a method for encouraging restraint on campaign spending. Thus, the Task Force recommends a voluntary limit of \$25,000 along with a requirement that candidates and issue advocacy groups place a political identification statement on campaign materials they distribute and disclose within that statement if they have spent in excess of the \$25,000 figure.

Delegate Expenses/Compensation

Delegates should not be compensated for their service but should be reimbursed for necessary out-of-pocket expenses.

An analysis prepared for the Task Force indicates that compensation levels did not appear to affect convention delegate demographics in the past in other states. (CSCS memo presented at 12/3/04 Task Force meeting, in Appendix #5.) Thus, and given the concerns about cost, the Task Force recommends that Delegates not be compensated.

However, reimbursement for necessary out-of-pocket expenses should be provided. Out-of-pocket expenses should be interpreted with a view towards special needs, such as occasional child-care expenses of the Delegates, which could likely be accommodated in the budget presented below. According to a legal analysis made available to the Task Force, reimbursement of Delegates for expenses would not preclude members of the Legislature from serving as Delegates, while a salary or other compensation would do so under provisions of the Constitution. (12/1/04 OLS letter to Senator Adler *et al.*, in Appendix #5.)

III – SCOPE

This section describes subjects to be considered by the Convention in recommending fundamental change to the property tax system and providing relief to property taxpayers, as well as the limitations on the scope of the Convention, revenue neutrality, the nature of Convention proposals (constitutional only or statutory as well), and the review of Convention proposals.

Subjects for Consideration

The enabling act should clearly state that the Convention will be strictly limited to considering and making recommendations to reform the current system of property taxation and that these recommendations must further one or more of the following goals: eliminating inequities in the current system of property taxation, especially as they affect low and moderate income residents; ensuring greater uniformity in the application of property taxes; reducing property taxes as a share of overall public revenue; providing alternatives that reduce the dependence of local governments on property taxes; and providing alternative means, including possible increases in other taxes, of funding local government services.

If there is to be a Property Tax Convention, the sole purpose of such a Convention should be to reform New Jersey's property tax system. This is clearly the purpose of such a convention as envisioned in the statute that created the Task Force. The goal of reforming the property tax system so that the level of property taxes is reduced and the burden of property taxes is more fairly allocated will be a difficult one. Should the Legislature and the people decide to convene a Property Tax Convention, the goal of property tax reform can best be achieved through a limited Convention whose sole mission is property tax reform.

While some who testified before the Task Force said that a Convention also should pursue the goal of reducing government spending, there currently are opportunities each year to pursue that goal through the annual budget process at the State and local levels. A Property Tax Convention would not be an appropriate substitute for this process. Moreover, the Task Force is mindful of the scholarly advice it received

suggesting that, if a Convention were empowered to also address the level and purposes of spending, there would be no way to effectively confine the scope of the Convention to totally ensure against it becoming a forum for debate about divisive social issues. This in turn would make achievement of the central goal of property tax reform even more difficult.⁶

Limitations

The enabling act should include language substantially identical to that found in A-1786 of 2004 (Roberts) and S-263 of 2004 (Adler) regarding the “thorough and efficient” clause and affordable housing obligations.

If the Legislature clearly states that the exclusive purpose of the Convention is property tax reform, then this affirmative statement of the mandate of the Convention would also operate as a prohibition against consideration of subjects not encompassed by that mandate, such as the basic rights set forth in Article I of the Constitution. The Constitution’s guarantee of a thorough and efficient education and the obligations of municipalities to provide affordable housing, like the rights in Article I, would not be subjects within the mandate of a Property Tax Convention. But because of the nature of those issues, it still would be prudent for the Legislature to specify in the enabling act the restrictions regarding the “thorough and efficient” clause and municipal affordable housing obligations.

Revenue Neutrality

There should be a requirement that proposals be revenue neutral, which should be clearly defined and verifiable.

All of the recent Convention bills have required revenue neutrality and define it as “the aggregate amount of all revenues enacted under the powers of the State, as accurately as can be estimated and measured, shall be the same after changes recommended by the Convention as they were before such changes.” The Task Force recommends that this requirement and definition be used with the understanding that this outcome may be modified by economic developments in subsequent fiscal years. Also, the Task Force recommends that the Convention have available to it professional fiscal analysts to advise the Convention on this issue.

6. Task Force member Michael R. Cole would authorize the Convention to examine spending at all levels of government and propose limits and efficiencies concerning same. The dissents of Task Force members Senator Leonard Lance and Assemblyman Kevin J. O’Toole on scope and limitation issues are included in Appendix # 6 to this Report.

Constitutional Amendments/Statutes

A Convention authorized to propose both statutory changes and Constitutional amendments is preferred; but if the legislation necessary to grant the authority to propose statutory changes is not approved by the necessary three-fifths majority in the Legislature in 2005, then a Convention that can propose only constitutional amendments still should be allowed to proceed.

In order for a Convention to be authorized to propose both constitutional and statutory changes, the Legislature would have to approve and submit for voter approval two separate pieces of legislation. One would be a bill to authorize a Convention, which would require only a simple majority vote of the Legislature in order to appear on the ballot. The other would be a concurrent resolution to temporarily amend the Constitution to permit the Convention to propose statutory changes. In order for this proposal to appear on the ballot in 2005, the Legislature would have to approve the concurrent resolution by a three-fifths majority.

Ideally, a Property Tax Convention should have the capability to consider both statutory and constitutional changes since many of the current policies that affect the property tax system are embodied in statutes while some others are found in the Constitution. But a Convention that would be able to propose only constitutional changes still could be successful in achieving property tax reform because such a Convention could, for example, propose binding, guiding principles that the Legislature would be required to implement. For these reasons, the Task Force recommends flexibility regarding this issue. The bill to authorize a Convention should be permitted to take effect regardless of whether the resolution regarding the temporary constitutional amendment is adopted. If both the bill and the concurrent resolution were adopted, then the Convention would be able to address both constitutional and statutory changes. If only the bill were adopted, then the Convention still would take place but would be permitted to address only constitutional changes.⁷

7. Task Force members Susan A. Cole and Michael R. Cole dissent from the recommendation that the Convention be enabled to propose statutory changes as well as constitutional amendments. They believe the creation of laws rests within the authority of the Legislature and the Governor, with all of the checks and balances, rules and procedures, and ultimate accountability to the voters that the legislative process entails. In their judgment, a constitutional Convention should be limited to constitutional amendments. Task Force member Ernest C. Reock, Jr., suggests in general that the Convention be authorized to propose statutory changes only, rather than amendments to the State Constitution. In particular, in order to avoid rigid controls in a changing world, he urges that any tax or budget limitations be presented to the voters as statutory, rather than constitutional, measures.

Proposal Review

A panel of three retired jurists, to be appointed by the Chief Justice of the Supreme Court of New Jersey, should review proposals during the course of the Convention and before final adoption by the Convention to make sure the proposals do not exceed the Convention's scope and are consistent with the mandate for the Convention and any limitations in place, and there should be a presumption of validity for proposals that the panel has determined to be consistent with the mandate and any limitations.

The Task Force consensus favors the legitimacy provided by a review of three retired jurists. An opinion of the Office of Legislative Services provides a basis for such a retired jurist review (5/29/02 letter to Senator Adler, in Appendix #5). Also, several of the recent Convention bills provide for this type of review.⁸

In the 1947 enabling act, the Secretary of State provided the review. However, the only limitations on that convention were simple and obvious – no change in the boundaries of counties and no change in the system of legislative apportionment. So, a more substantive review by a neutral panel was not necessary.

In 1966, the State Attorney General would have been authorized to review proposals since he was designated as the convention's legal officer prior to the convention by the State House Commission.

Legal Challenges

The Convention enabling act should require that any legal challenge to the Convention's proposals must be filed under a very short time frame and should provide for expedited court review of any challenges.

There is a need to require a short time frame in which suits may be filed and expedited court review of objections to Convention proposals. This would prevent a situation where an opponent of the proposals could delay a public vote by filing suit on the eve of the election.

8. See A-1786 of 2004 (Roberts), S-263 of 2004 (Adler), and S-1392 of 2004 (Lance).

IV – THE CONVENTION

This section of the report concerns Convention operations and proposals.

Location

The Convention should be held at Rutgers University in New Brunswick.

Literature regarding the 1947 convention and the 1966 convention shows that Rutgers University was selected for a number of reasons, including: distance makes it independent of the concerns of Trenton; desire to host the Convention; collegial atmosphere that would encourage nonpartisanship; central location in the State; and ability to set up a special reference library and other work areas. All of these reasons also justify conducting the Property Tax Convention at Rutgers.

Dates

The Convention should convene soon after the Delegate election in order to organize itself and give direction to staff for research projects. The Convention should complete its work by July 31, 2006.

The Task Force considered the several configurations of past conventions and current legislative proposals. In addition, they considered that a general election for electing Delegates would permit an earlier start than the late winter or early spring commencement reflected in those configurations. On that basis, the Task Force recommends that the Convention convene shortly after the election in order to consider Convention rules, organizational issues, and such other relevant matters within the Convention's scope as they shall determine. If the Convention chose, there could then be a break during which there would be a refining of those rules and other organizational matters and receipt of research materials. The Convention could then reconvene in the spring and conclude its work by late July, which would provide sufficient time to notify the public of the Convention proposals. The Task Force makes this recommendation recognizing that Article II and Article IX regarding legislative notice requirements for public questions and proposed Constitutional amendments, respectively, do not apply to the Convention, since the Constitution is silent on Conventions, but also recognizing that compliance with the three-month advance publication requirement of Article IX would be prudent and appropriate. This time frame would also enable the public to be fully informed about the proposals adopted by the Delegates.

Research

Research for the Delegates before the Convention, including the compilation of draft rules for operation of the Convention, should be prepared by the Legislative Services Commission.

All of the recent Convention bills state that all pre-Convention research is to be undertaken by the Legislative Services Commission (LSC), which shall also recruit Convention staff. Some recent bills would direct the State House Commission (SHC) to make physical arrangements with Rutgers University. Previous conventions utilized similar State agency assistance, including the Department of Treasury, Office of the Attorney General, and others.

The enabling act should reflect that LSC is to provide the pre-Convention research, including the draft rules. As noted above, the Convention should convene shortly after the Delegate election in order to consider various matters such as SHC's physical arrangements and LSC's research efforts.

Rules

Delegates should set the rules for Convention operations, except that the Legislature should specify in the enabling act that approval of proposals for submission to the voters requires a majority vote of all those serving as Delegates.

The 1947 and 1966 enabling acts permitted convention delegates to set their own rules by majority vote. Current bills provide the same authorization. Given precedent, the enabling act should state that Convention rules will be set by the Delegates, but that votes on proposals for submission to the voters require a majority vote of all those serving as Delegates, in order to demonstrate a strong consensus for any proposals.

Manner of Presentation of Proposal to Voters

The Convention should not be permitted to present to the voters separate questions on each of its specific proposals but should be required to present a comprehensive proposal as a single question.

The Office of Legislative Services provided an opinion stating that, if a Convention were to be authorized by a temporary constitutional amendment to propose statutory changes as well as constitutional amendments, then both the statutory changes and the constitutional amendments could be submitted for voter approval as a single ballot question. (12/8/04 OLS letter to Senator Lance, in Appendix #5.) Since Article IX of the Constitution envisions voting on each amendment proposed by the State Legislature separately and distinctly, the one-proposal approach should be specifically

addressed in the Convention enabling law for clarity and approved by the voters at the November 2005 general election. It is unlikely that the Convention would propose competing comprehensive proposals, but the Legislature may want to consider not precluding that possibility.

Timing of Presentation of Proposal to Voters

Convention proposals should be placed on the 2006 general election ballot immediately following the Convention.

The New Jersey State Constitution does not address constitutional conventions, but Article II regarding submission of statewide public questions arguably requires submittal of Convention proposals at a general election (as opposed to any other election). Moreover, several constitutional scholars providing testimony to the Task Force cited the benefits of this approach and noted that it comports with the spirit of the Constitution. It is preferable based upon the likely familiarity of the public with the results of a recently concluded Convention, and it is a means to avoid an inordinate amount of time for the public to grow weary of an extended campaign. The 1947 and 1966 conventions by their enabling acts placed their proposals on the immediately following general election ballot, and all of the recent Convention bills follow this course. As with the public question as to the holding of a Convention, the Task Force sees a benefit of a general election vote for proposals in that the large number of voters adds credibility to the vote as an expression of the will of the people.

Public Education

The Convention should be authorized to conduct a public education campaign about its proposals, but the campaign should be neutral in content.

Constitutional scholars testifying before the Task Force stated that providing voter education on the Convention proposals serves to ensure that voters are engaged in the reform of their Constitution, as is envisioned in the Constitution. In fact, an “address to the people” regarding the proposals is specified in all of the recent Convention bills.

In 1947, public education was a priority of the Convention. Provision for distribution of an “address to the people” was provided for in the 1947 convention enabling act. As a result, public education was initiated by that convention’s delegates, who approved newspaper and radio ads, the mailing of three million summaries of the proposed Constitution to the public, and the printing of 600,000 full copies of the proposed Constitution, out of funds remaining from the convention appropriation that had been provided by the Legislature. (Connors, Richard J., *The Process of Constitutional Revision in New Jersey: 1940-1947*, page 189.)

In 1966, public education was also a priority of the Convention, which appointed a committee of eight delegates to publicize the general election ballot question on the new Legislative apportionment system. (Reock, Ernest C., Jr., *Unfinished Business*, page 221.)

Public education for Convention proposals is not intended to mean that the State is to pay to convince the public one way or the other. For this reason, the Task Force recommends that the public education effort be neutral in content. The same system that is in use for assuring the validity of explanatory statements for ballot questions could be used regarding the neutrality of the public education materials.

V – COSTS

All stages of Convention planning and operation

\$3.845 million should be appropriated for pre-Convention, Convention, and post-Convention activities.

Appropriations in recent legislation range from \$4 million to \$15 million. The staff presented and the Task Force accepted the following proposed budget:

<u>PRE-CONVENTION</u>	<u>Estimate</u>
Delegate and Convention Election	1,150,000
\$500,000 cost to review petitions, rotate candidates from district to district, train board workers	
\$500,000 candidate stmts. collected, camera ready, print, mail	
\$100,000 sample ballot qstns. written, camera ready, print, mail	
\$50,000 ELEC monitoring	
Research, facilities, staff for up to 1month	
\$50,000 research	
\$5,000 facilities	
\$10,000 staff	<u>65,000</u>
<i>SUBTOTAL OF PRE-CONVENTION</i>	\$1,215,000

CONVENTION

Printing, transcripts, notices, audio	675,000
\$420,000 printing	
\$70,000 transcripts	
\$5,000 notices	
\$180,000 audio	
Meals, Rutgers charges, other agency help	340,000
\$180,000 meals	
\$60,000 Rutgers	
\$100,000 other agency help	
Experts and constitutional scholars	120,000
\$60,000 experts	
\$60,000 constitutional scholars	
Staff/Delegate expenses	
\$210,000 Delegate out of pocket	
\$90,000 staff out of pocket and unforeseen expenses	
\$145,000 Director, counsel, 2 press, 2 accountants, 4 aides	445,000
<i>SUBTOTAL OF CONVENTION</i>	<i>\$1,580,000</i>

POST-CONVENTION

General Election with proposal vote and proposals statement	1,000,000
\$420,000 for costs related to Convention proposals vote including ads and notice to municipal clerks, etc.	
\$380,000 proposal statement, camera ready, print, mail on expanded sample ballot that requires larger paper	
\$200,000 public education using same amount spent in 1947	
ELEC monitor of issue groups	50,000
<i>SUBTOTAL OF POST-CONVENTION</i>	<i>\$1,050,000</i>


<u>TOTAL</u>	<u>\$3,845,000⁹</u>
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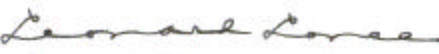
9. Task Force member Assemblyman Kevin J. O'Toole dissents from this recommended budget. He questions the pre-Convention amount because the election of delegates and the referendum on the convention call will be held at a general election under the recommendations, and the amount cited may include costs that are normally incurred in a general election. Task Force member Ernest C. Reock, Jr., proposes that the budget allocation for an independent Convention staff and consultants be substantially increased to reduce the necessity for Convention delegates to rely on lobbyists and special interest staff for expert advice.

Signed and Submitted By:

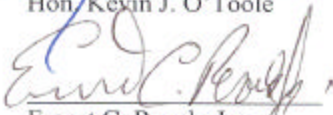

Carl E. Van Horn, Chair

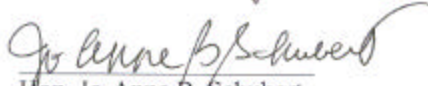

Hon. John H. Adler

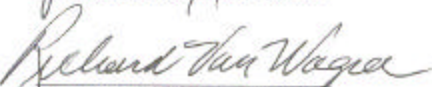

Susan A. Cole



Hon. Leonard Lance

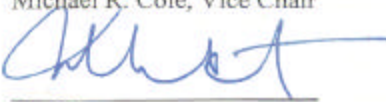

Hon. Kevin J. O'Toole



Ernest C. Reock, Jr.,



Hon. Jo-Anne B. Schubert



Richard Van Wagner, Sr.



Michael R. Cole, Vice Chair

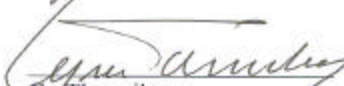

Ida Castro


Sherryl A. Gordon


Terrence Malloy


Hon. Gary Passanante


Hon. Joseph J. Roberts, Jr.


Cy Thannikary